

PATENT COOPERATION TREATY

REC'D 30 SEP 2005

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From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:
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Date of mailing
(day/month/year) **28 SEP 2005**

Applicant's or agent's file reference

FOR FURTHER ACTION

See paragraph 2 below

ILEX:096WO

International application No.

International filing date (day/month/year)

Priority date (day/month/year)

PCT/US04/43142

22 December 2004 (22.12.2004)

22 December 2003 (22.12.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61K 39/395 and US CL: 424/141.1, 156.1

Applicant

ILEX PRODUCTS, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 65.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
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Authorized officer

Marianne DiBriano, Ph.D.

Telephone No. 571-272-1600

Form PCT/ISA/237 (cover sheet) (January 2004)

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US04/43142

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US04/43142

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)

Claims 1-4 YES

Claims NONE NO

Inventive step (IS)

Claims 1-4 YES

Claims NONE NO

Industrial applicability (IA)

Claims 1-4 YES

Claims NONE NO

2. Citations and explanations:

Claims 1-4 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the claimed method of preventing or treating diabetes using an anti-CD52 antibody, including CAMPITH-1H.

Claims 1-4 meet the criteria set out in PCT Article 33(4), and thus meet industrial applicability because the subject matter claimed can be made or used in industry.

WRITTEN OPINION OF THE
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International application No. _____

PCT/US04/43142

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the questions whether the claims are fully supported by the description, are made:

Claims 1-4 are objected to as lacking clarity under PCT Rule 66.2(a)(v) because of the claims 1-4 not fully supported by the description. The description does not disclose the claimed invention in a manner sufficiently clear and complete for the claimed invention to be carried out by a person skilled in the art because: there is no description of administering to any animal an anti-CD32 antibody, including CAMPATH-1H, in order to treat or prevent diabetes. Evidentiary reference Winter et al teach that "Because of its potent potential toxicities, it is difficult to envision a role for Campath-1H in the treatment of prediabetes at the present".